by Anthony J. Russo

The Stay of Judgments and Proceedings in Florida State Courts

What are your options should a money judgment be entered against your client? Aside from payment, there is appeal. But how do you stop the execution of the judgment during the appeal? What are your options if the order is one not solely for the payment of money, or is not a final order? A stay is a tool that the court uses to manage litigation and protect the rights of parties during appeals. This article discusses the use of stays in Florida's state court system.

Stays Involving Appellate Review

Stays are commonly sought by the losing party either to maintain the status quo during interlocutory appeals or to suspend the execution of money judgments. To determine your options after an order or final judgment has been entered against your client, start with Fla. R. App. P. 9.310. This rule controls all proceedings in the Supreme Court and the district courts of appeal, and all proceedings in which the circuit courts exercise their appellate jurisdiction over decisions of the county courts, "notwithstanding any conflicting rules of procedure."[1]

First, you will see Rule 9.310 applies only to orders that are appealed. Stays of orders that are not appealable are not controlled by this rule. Second, this rule divides the universe of appealable orders into those that are judgments solely for the payment of money and all others. The rule opens with the following prescription applicable to all those other orders: "A party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both."

Let's take apart this dense language and examine its pieces.

First, the trial court, the "lower tribunal," has the power to stay its own orders.[2] That makes sense. Florida's constitution creates the right to appeal orders of various kinds in art. V, §4(b)(1). The party's right to appeal an order would be empty if orders and judgments could not be stayed pending review.

With limited exception, the decision to grant, modify, deny, or craft the conditions of a stay is a discretionary act entrusted to the trial court, but the discretion is not unfettered. No matter whether the judgment is one for the payment of money, declaratory, or injunctive relief, the lower tribunal cannot require an appellant to file a supersedeas bond as a precondition of the appeal.[3] The right to appeal is guaranteed by the state constitution and may not be abridged by a trial court. Rule 9.310(f) gives the appellate court the power to review a trial court's stay order when an appeal has been commenced. This, too, makes sense. The subject matter of the appellate court's jurisdiction could be mooted if the parties' legal positions were inexorably altered by the execution of the judgment before the appeal was concluded.

A wide range of orders is subject to appellate review, and all those orders are subject to Rule 9.310. This includes final orders, the appealable nonfinal orders listed in Fla. R. App. P. 9.130, and orders reviewable by way of petition for writ of certiorari, prohibition, or mandamus.

Final orders end the trial court's labor in an action, and they come in many forms. They may be money judgments, declaratory judgments, or decrees. They can all be stayed. Nonfinal orders that may be immediately appealed, and, therefore, that may be stayed by the operation of Rule 9.310, include orders that concern

- Venue;
- Injunctions;
- The determination of the jurisdiction of the person;
- The determination of the right to immediate possession of property, including orders pertaining to writs of replevin, garnishment, or attachment;
- The determination of the right to immediate monetary relief or child custody in family law matters;
- The determination of the entitlement of a party to arbitration, or to an appraisal under an insurance policy;
- Workers' compensation immunity;
- The certification of a class;
- Immunity in a civil rights claim arising under federal law;
- Whether a governmental entity has taken action that has inordi-

nately burdened real property;

• The appointment of a receiver.

A stay during the appeal of a nonfinal order may be necessary because "[i]n the absence of a stay, the trial court may proceed with all matters, including trial or final hearing," provided that no final order may be entered until the appellate proceedings are concluded, pursuant to Rule 9.130(f). Finally, Rule 9.310 empowers the trial court to stay its nonfinal orders that are immediately reviewable by way of a petition for writ of certiorari, prohibition, or mandamus. If the circumstances of your case warrant the filing of such a petition, then they likely would justify the entry of a stay of the challenged order pending appellate review.

Asking the Trial Court for a Stay Pending Appellate Review

If your client's situation requires a stay of the order while the appellate court reviews it, then you need to fashion a motion for stay and file it with the trial court. The trial court's order or judgment is not stayed by the mere filing of a notice of appeal or petition for writ of certiorari,[4] and, except for money judgments, a stay pending appeal is a matter entrusted to the trial court's discretion.[5] The trial court has the continuing jurisdiction to grant your stay, to lift it, or to modify it. The trial court may impose conditions, and it may alter those conditions in its discretion for the duration of the appellate proceedings.[6]

There are limits to the trial court's discretion. The trial court cannot require, as a condition of the stay, the payment of the judgment holder's attorneys' fees.[7] Only when fees are otherwise recoverable by contract or statute may the trial court condition a stay on the payment of attorneys' fees in the event the appellant fails to prevail on appeal.

When to Move for a Stay — Timing Is Important

Rule 9.310(a) requires you to file a motion, and the language implies the motion be in writing. In practice, however, strict compliance with the rule may be unworkable. The trial court may issue an order granting relief to your opponent within a time frame shorter than would accommodate the filing and setting of a motion to stay. If you find yourself at a hearing and the judge rules against your client, and you conclude the ruling would cause substantial, irreparable injury to your client, then move ore tenus for a stay. Be sure to get a ruling on the record. Promptly get a written order.

Better yet, be prepared. If you know the hearing may result in an order that your client would appeal, file a conditional motion for stay. Notice it for hearing. Bring alternative proposed orders granting and denying your motion for stay. Head to court and argue for the best outcome, but be prepared to deal with the worst. If the trial court grants immediate relief against your client, then argue your motion for stay then and there. If the trial court denies your motion to stay, make sure you get the ruling on the record and a written order from the court. This will perfect your right to apply to the appellate court for a stay.

Remember, the rule provides for a stay only if you seek appellate review of the order. If you obtain a stay order, but you do not ultimately pursue an appellate remedy, then the authority supporting the stay provided by Rule 9.310 would end. Your opponent would have a very good argument to dissolve the stay that you have obtained because the court's authority to do so, under this rule, ended on the last day you had to file your notice of appeal or your petition. An order from the lower tribunal staying the effect of its judgment or order is a nullity unless a notice of appeal or petition is actually filed.[8]

What Justifies Stay of Order Pending Appellate Review

The trial court's wide discretion in crafting a stay is an invitation to be creative in your request for a stay. The remedy you request must suit your client's needs, of course. The trial court anticipates that you will suggest a stay that does so. But it will more readily grant your request if the conditions in your proposed stay do no harm to your opponent and do not unduly delay the proceedings. Reasonable conditions may include that you file your notice of appeal or petition promptly, perhaps faster than permitted by the appellate rules; that other aspects of the litigation proceed unabated; or that you protect property, documents, or evidence in your possession from spoliation.

To obtain a stay from the appellate court, you should demonstrate that your client will likely prevail on appeal, and your client will suffer some substantial injury if the order is not stayed.

The appellate court applies this standard when deciding whether to issue a stay order.[9] Following this outline makes for a strong argument in the trial court as well. The checklist for your motion to stay should include:

• Informing the trial court that it is empowered by Rule 9.310 to stay

the order it has just entered;

• Notice to the court that you intend to file a notice of appeal or petition and the date you intend to file;

• A summary of the legal and factual grounds for the appeal;

• A discussion of the harm that will befall your client should the stay not be granted;

• Evidentiary support in the form of affidavits from your client attesting to any facts justifying the stay;

• A discussion of the effect of the stay on the progress of the case and specific proposals to keep other parts of the case moving forward;

• A demonstration that the stay will not harm your opponent.

A stay motion with these elements would be compelling. The affidavit can be used to authenticate papers, letters, emails, or other documents that you submit in support of your motion. Documents that are unauthenticated are generally not admissible, and the court may find they have no evidentiary weight.[10]

Finally, move for relief promptly and get a ruling as soon as possible. Although there is no time frame for making a motion to stay set within Rule 9.310, time does matter, and earlier is better than later. Waiting for weeks to ask for a stay undercuts your argument that the order imposes a substantial burden or injury on your client.

If Trial Court Denies Request for a Stay, Ask the Appellate Court

Rule 9.310 gives the trial court the power to issue or deny stays, but it also gives the appellate court the power to review those rulings. You must apply to the trial court first, though.[11] If the lower tribunal refuses to grant the motion to stay, then review is sought in the appellate action by motion.[12] The appellate court will review the lower tribunal's order for an abuse of discretion.[13] The trial court is presumed to know the case well, and the question to stay usually involves a mixture of fact and legal questions that the trial court is well-suited to decide.

Your appellate motion for stay should be filed as soon as possible, preferably as soon as your appellate case is commenced. To determine what should be included in your motion to the appellate court, consider what would convince the appellate judges that your client deserves a stay. First, they will need to see your trial court motion and the order denying it. They will need a succinct statement of the facts that apprises them of the nature of the appellate case and a discussion of the course of proceedings. They will need to know the legal question that you will ask them to resolve. To warrant issuance of a stay, for the purpose of preserving the status quo during the appellate proceeding, the movant must demonstrate a likelihood of success on the merits and the likelihood that harm would result if the stay were not granted.[14]

You will need to provide the appellate court an appendix of documents from the trial court file that includes the order on appeal, the pertinent hearing transcripts, and the moving and opposition papers related to the stay order. Include a progress docket report from the trial court. Take care to bind the documents with tabs or, better yet, number the pages. Mind the specific court's requirements for submissions of appendices. You'll find each district court's requirements set out on their websites. If you have a question, call the clerk's office at the appellate court.

Watch your timing. An appellate court cannot consider a motion if no appellate case has yet been commenced. Therefore, the notice of appeal or the filing of the petition must coincide with or precede your filing of the appellate motion to stay. Only once the appellate court establishes its own case are you free to file your motion. Filing a motion in the appellate court does not automatically suspend any order of the trial court, so be

aware of your time limitations. If the motion is time-sensitive, say so in the motion, and inform the appellate court of the deadline by which you must act.

When Does the Stay End?

If the order is a final judgment, your stay will remain in effect until the conclusion of all appellate proceedings. Appellate proceedings typically conclude when the appellate court issues its mandate. The appellate clerk issues the mandate 15 days after the court issues its decision or "as may be directed by the [appellate] court."[15] So, if you intend to try an appeal to the Supreme Court, then you must consider whether to ask the appellate court to withhold issuance of its mandate until the Supreme Court either rejects your jurisdictional papers, or takes jurisdiction of the case and completes its review.[16] Alternatively, you may ask the trial court to issue a new stay pending completion of Supreme Court proceedings.

Stays Not Involving Appellate Review

A trial court is invested with the power to stay the effect of any of its interlocutory orders, even if they are not appealable.[17] But that power is not established by Rule 9.310. Rather, it is part of its inherent power to manage the case. The trial court may grant or deny a stay, and it can craft unique conditions for the stay and modify them as a case management tool. Whether it does so, and what conditions it imposes, is a matter for its broad discretion.[18] If your client is on the receiving end of such a stay and objects to it, you may seek appellate review of that stay. But the jurisdiction of the appellate court to do so is not established by Rule 9.310(f), and review is not by motion. Instead, the appellate court reviews the trial court's stay order by means of a petition for writ of certiorari. By demonstrating to the appellate court that the trial court's stay has substantially curtailed some important right of your client, you can establish the appellate court's jurisdiction to review the order. You'll need to show the order departs from the essential requirements of law (meaning the order lacks a legal or factual basis), and you'll need to show the stay causes a serious, irreparable injury to your client, one that cannot be remedied on appeal from the final judgment.[19]

What to Do with a Judgment Solely for Payment of Money

Trial courts have the power to stay execution of money judgments on a showing of "good cause" pursuant to Fla. R. Civ. P. 1.550(a). This is a discretionary decision, of course. But an automatic stay of a money judgment can be obtained under Fla. R. App. P. 9.310(b). This appellate rule requires the filing of a "good and sufficient bond" issued by a surety company authorized to do so in Florida. Rule 9.310(b) sets the amount of the bond as the principal amount of the judgment, plus two years of interest calculated at the statutory rate.[20] Filing the bond dispenses with the need for filing a motion or obtaining a court order.[21]

Pursuant to Rule 9.310(b)(2), the state, or a public officer in their official capacity, or a board, commission, or other public body seeking review, is entitled to a stay without bond in most circumstances. The right is not absolute, but if you represent a government entity or official, you must keep this valuable right in mind.

A "good and sufficient bond" is one that is issued by an insurer authorized by the Office of Insurance Regulation to do so in Florida. A bond is commonly obtained through a commercial insurance broker. Brokers can be useful intermediaries to guide you through this process. The Office of Insurance Regulation maintains a website listing the scores of sureties authorized to conduct such business in Florida.[22] Beware that unless you represent a substantial, established corporation, surety companies generally require posting 100 percent collateral in the form of an irrevocable letter of credit or a cash deposit.

A proper bond will contain the following elements: It will identify the surety, the principal, and the judgment holder, who is the obligee. The face of the bond will recite the surety's undertaking to be bound to the court for the amount of the judgment, plus the two years of statutory interest up to the amount of the bond. The usual condition stated by the surety on the face of the bond is that if the judgment is satisfied or reversed on appeal, then the bond becomes void. The bond will be signed by both the principal and the surety.

The original bond is filed with the trial court under a notice of filing bond prepared by the lawyer. It is upon the filing of the bond that the automatic stay takes effect. If execution proceedings have already commenced, the filing of the bond does not act to undo the orders or negate the motions already filed or adjudicated. The filing of the bond at that late point only stays further execution.[23]

This procedure secures the judgment holder's ability to collect its principal and interest, and it preserves the judgment creditor's right to appeal. Beware that an automatic stay under this rule

may, under certain conditions, be dissolved.[24] In general, though, the discretion of the court to modify the terms of a bond is extremely limited. The lower tribunal may not increase or decrease the amount of the bond as set out in the rule or otherwise prejudice the creditor's realistic chances of recovery at the conclusion of the appeal.[25] When the appellate proceedings are concluded and the judgment is paid or reversed, be sure to obtain a written order from the trial court declaring that the bond is void, and the surety's obligation is released.

Conclusion

The effective litigator will know how to use stays to the client's advantage. Stays can be used to limit the effect of an order or stop the execution of a judgment. Trial courts have wide discretion in whether to grant or deny a stay and what conditions to put on a stay. Your client needs you to know how to obtain stays from the trial and appellate courts when their judgment day comes.❑

[1] Fla. R. Jud. Admin. 2.130.
[2] *Holman v. Ford Motor Co.*, 239 So. 2d 40, 43 (Fla. 1st D.C.A. 1970) ("It seems well settled that interlocutory judgments or orders made during the progress of a case are always under the control of the court until final disposition of the suit, and they may be modified or rescinded upon sufficient grounds at any time before final judgment.").
[3] *Fitzgerald v. Addison*, 287 So. 2d 151 (Fla. 2d D.C.A. 1973).
[4] *Thames v. Melvin*, 370 So. 2d 439 (Fla. 1st D.C.A. 1979).
[5] *Eicoff v. Denson*, 896 So. 2d 795, 799 (Fla. 5th D.C.A. 2005) (affirming decision of trial court to deny motion to stay a judgment that restrained homeowner from violating restrictive deeds pending appeal).
[6] Fla. R. App. P. 9.310(a).
[7] *City of Coral Gables v. Geary*, 398 So. 2d 479 (Fla. 3d D.C.A. 1981).
[8] *State v. Budina*, 879 So. 2d 16 (Fla. 2d D.C.A. 2004).
[9] *Perez v. Perez*, 769 So. 2d 389 (Fla. 3d D.C.A. 1999).
[10] Fla. Stat. §90.901 ("Authentication or identification of evidence is required as a condition precedent to its admissibility.").
[11] *Mitchell v. Leon County School Board*, 591 So. 2d 1032 (Fla. 1st D.C.A. 1991).
[12] *So. Fla. Apartment Ass'n v. Dansyear*, 347 So. 2d 710 (Fla. 3d D.C.A. 1977).
[13] Fla. R. App. P. 9.310(a). The lower tribunal has "continuing jurisdiction, in its discretion, to grant, modify, or deny such relief."
[14] *Perez v. Perez*, 769 So. 2d 389 (Fla. 3d D.C.A. 1999).
[15] Fla. R. App. P. 9.340(a).
[16] Fla. R. App. P. 9.310(e).
[17] *Holman v. Ford Motor Co.*, 239 So. 2d 40, 43 (Fla. 1st D.C.A. 1970) ("It seems well settled that interlocutory judgments or orders made during the progress of a case are always under the control of the court until final disposition of the suit, and they may be modified or rescinded upon sufficient grounds at any time before final judgment.").
[18] *REWJB Gas Invs. v. Land O' Sun Realty, Ltd.*, 643 So. 2d 1107, 1108 (Fla. 4th D.C.A. 1994) (granting stay of eviction proceedings pending determination of declaratory judgment action on terms of lease).
[19] *Verlingo v. Telsey*, 801 So. 2d 1009, 1010 (Fla. 4th D.C.A. 2001).
[20] Fla. Stat. §55.03; Florida Department of Financial Services, Statutory Interest Rates, http://www.myfloridacfo.com/aadir/interest.htm (statutory rate of interest).
[21] *Wintter & Cummings v. Len-Hal Realty, Inc.*, 679 So. 2d 1224 (Fla. 4th D.C.A. 1996) (entry of court order is not necessary for bond to become effective as supersedeas bond); *Fla. Coast Bank of Pompano Beach v. Mayes*, 433 So. 2d 1033 (Fla. 4th D.C.A. 1983), *petition for review dismissed*, 453 So. 2d 43 (rule applies when the only relief granted is for payment of money).
[22] Florida Office of Insurance Regulation, Company Directory, http://www.floir.com/companysearch (search the list of authorized lines of business for sureties).
[23] *Freedom Insurors, Inc. v. M.D. Moody & Sons, Inc.*, 869 So. 2d 1283 (Fla. 4th D.C.A. 2004).
[24] *Mitchell v. State*, 911 So. 2d 1211 (Fla. 2005).
[25] *Platt v. Russek*, 921 So. 2d 5 (Fla. 2d D.C.A. 2004); *see also PS Capital, LLC v. Palm Springs Townhomes, LLC,* 9 So. 3d 643 (Fla. 3d D.C.A. 2009) (bond must be in the amount set forth in the rule).

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